IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10589 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BHARAT M MEHTA

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 10589 of 2000

MR HARDIK C RAWAL for Petitioners

MR ANANT S DAVE for Respondents

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 07/08/2001

ORAL JUDGEMENT

At the oral request made by the learned counsel for the petitioner, leave to add Rushikesh Mehta, residing at 780, Bhavni Pole, Raipur, Ahmedabad as petitioner No. 2. Since the facts pertaining to the second petitioner are already on record, no further pleadings are required for petitioner No. 2.

2. Rule. Mr Anant S Dave, learned Additional Standing Counsel for the Union of India waives service of Rule for the respondents. With the consent of the learned counsel for the parties, this petition has been taken up for final hearing today and is being disposed of this judgment.

3. The Postal Department of the Union of India allows the public to open and operate Post Office Monthly Income Accounts under the Post Office (Monthly Income Account) Rules, 1987. Rule 4 of the said Rules reads as under :-

"4. Opening of account :- A depositor may operate more than one account under these rules subject to the condition that deposits in all account taken together shall not exceed rupees two lakhs and four thousand in single account and rupees four lakhs and eight thousand in joint account."

Rule 17 of the said Rules reads as under :-

"17. Account opened in contravention of rules :Subject to the provisions of rule 16, where an account is found to have been opened in contravention of any relevant rule for the time being in force and applicable to the account kept in the Post Office Savings Bank, the relevant Head Savings bank may, at any time, cause the account to be closed and the deposits made in the account refunded to the depositor without interest."

4. The controversy in this petition has arisen on account of the fact that two brothers and one sister-Bharat Mehta, Rushikesh Mehta and Purnimaben Mehta have opened two accounts under the Post Office Monthly Income Scheme. The amounts deposited in the two accounts and the relevant particulars are as under :-

MIS A/c. No.	Names	Amount (Rs.)
381795	Bharat Mehta Rushikesh Mehta	3,00,000/-

381794 Rushikesh Mehta 4,08,000/-
Purnima Mehta

Both the accounts were opened on 29.8.1998. The interest accruing on the amounts deposited in the aforesaid accounts were also credited in their respective savings bank accounts upto September, 1999.

5. By letter dated 6.10.1999 (Annexure "D"), the Sub Post Master, Raipur, Ahmedabad informed both the petitioners and their sister Purnimaben Mehta that the deposits in the joint accounts exceeded Rs.4,08,000/and, therefore, A/c. No. 381795 was required to be closed. The petitioners submitted their representation dated 4.11.1999 (Annexure "E") objecting to the communication and stating that the petitioners have not made misrepresentation to the postal department nor have they made any attempt to mislead the department. Hence, when the postal department itself had opened the two accounts, there was no justification for requiring the petitioners to close any of the two accounts. It was further pointed out that the purpose of opening each account in two names was just to ensure that in case of death of the first account holder, the second account holder can get the amount without having to undertake any further formalities. It was further contended that when the maturity period arrives, the amount is paid by drawing a cheque in the name of the first account holder and that the interest cheques are also paid in the name of the first account holder. Since the department did not accede to the petitioners' request, the present petition came to be filed for challenging the final order dated 15.7.2000 (Annexure "A") by which the Sub Post Master, Raipur, Ahmedabad informed the petitioners that not only the account was required to be closed, but no interest was admissible on the deposits made in A/c No. 381795 as it was opened in contravention of the Rules.

6. At the hearing of this petition, Mr Hardik Raval, learned counsel for the petitioner has assailed the order on merits and submitted that the petitioners had not committed any irregularity or illegality while opening the accounts and that it was the Postal Department which had opened the accounts. In fact, both the accounts were opened simultaneously on 20.8.1998 and, therefore, when the Postal Department opened the two accounts simultaneously and permitted the petitioners to deposit their monies in the said accounts, it is now not open to the respondents to require the petitioners to close either of the account or to deny them interest.

7. In reply, Mr Anant S. Dave, learned Additional Standing Counsel for the Postal Department has relied on Rules 4 and 17 quoted hereinabove and has also relied on the averments and submissions made in the reply affidavit filed by the Sub Post Master, Raipur, Ahmedabad, respondent No. 2 herein. Mr Dave even submitted that since both the accounts were joint accounts, each account holder has to contribute one half share in the respective accounts and therefore, Rushikesh Mehta, account holder No. 2 in A/c No. 381795 and account holder No. 1 in A/c. No. 381794 has to his credit a total amount of Rs.3,54,000/- which is more than the permissible maximum limit of Rs.2,04,000/-.

It is further submitted that the decision to deny interest to the petitioners is also justified in view of the provisions of Rule 17. Mr Dave further submits that since the petitioners were informed as far back as on 6.10.1999 that the account opened was irregular, no interest may be directed to be paid to the petitioners after 6.10.1999 onwards.

8. In rejoinder, Mr Raval submits that after the aforesaid communication, the petitioners had immediately made a representation dated 4.11.1999 and the petitioners had also approached the Dak Adalat which is a forum set up by the respondent for encouraging resolution of disputes with the department in an amicable manner. It is, therefore, submitted that since the petitioners were pursuing their legitimate remedies, the petitioners cannot be denied any interest even after October, 1999.

Mr Raval further states that in any view of the matter, to avoid any controversy, petitioner No.2-Rushikesh Mehta is prepared to have his name deleted and petitioner No. 1 is prepared to have another joint account holder (other than Purnimaben Mehta) in Account No. 381795.

9. Having heard the learned counsel for the parties and considering the request of petitioner No. 2 that he is prepared to have his name deleted with effect from 20.8.1998 and is prepared to have the name of another relative substituted, it appears to the Court that when the Postal Department allowed the petitioners and their sister Purnimaben Mehta to open two joint accounts with the aforesaid amounts, the petitioners cannot be made to suffer any adverse consequence without giving the petitioners an opportunity of substituting the name/s of one or more of the joint account holders. In a similar

case being Special Civil Application No. 9910 of 2000 and cognate matters, after hearing the learned counsel for the Postal Department in that case, this Court directed the respondent Postal Department to delete the name of joint holder No. 2 from one of the joint accounts and also directed the Postal Department not to recover any interest which was sought to be recovered on the ground that the account was opened in contravention of the Rules.

10. It is required to be noted that the petitioners and their sister Purnimaben Mehta had approached the Postal Department directly and they were permitted to open two accounts with the aforesaid amounts. If at all, the respondents had considered that opening the said accounts was irregular, it was for the Postal Department to inform the petitioners there and then that it was not possible to open such accounts. Having permitted the petitioners to open such joint accounts and having accepted the amounts, the respondents cannot be permitted to resile from their contract to pay interest to the petitioners till the amounts remained with the Postal Department. In a similar case being Special Civil Application No. 3422 of 2000 decided by this Court on 3.5.2000, this Court had on occasion to observe that when the Postal Department accepts the opening of accounts and if there is no misrepresentation or concealment of any fact nor suppression of any fact from the department, the functionaries of the Government who have to deal with such public savings schemes cannot be allowed to take such an arbitrary and incomprehensible stand after they themselves have accepted the opening of such accounts with addition of interest from time to time. In that case, this Court directed the respondents not to deny the payment of any interest to the petitioner therein.

In the instant case, it appears to the Court that when petitioner No. 2 Rushikesh Mehta is prepared to have his name deleted from A/c. No. 381795 with effect from 20.8.1998 and both the petitioners are ready and willing to have the name of another relative (other than Purnimaben Mehta) substituted as joint account holder No. 2 in A/c. No. 381795 with effect from 20.8.1998, there would be no justification for the department denying any interest on the amounts lying in the said account for any period.

11. In view of the fact that the petitioners have agreed to the aforesaid formula, this Court does not consider it necessary to adjudicate upon the rival contentions about the interpretation of the POST OFFICE

(MONTHLY INCOME ACCOUNT) RULES, 1987.

12. In view of the above discussion, the impugned communications dated 6.10.1999 (Annexure "D") and 15.7.2000 (Annexure "A") are quashed and set aside. It is directed that if the petitioners submit, within two weeks from today, an application that petitioner No. 2 wants his name to be deleted from A/c. No. 381795 with effect from 20.8.1998 and both the petitioners specify the name of another relative (other than Purnimaben Mehta) for being joined as joint account holder No. 2 in A/c. No. 381795, the respondents shall grant the same and shall grant the interest on the deposits in A/c. Nos. 381795 and 381794 at the normal rate payable under the scheme without reducing the rate of interest on any ground stated in Annexures "A" and "D".

13. The petition is accordingly disposed of in terms of the aforesaid direction. Rule is made absolute to the aforesaid extent.

(M.S. Shah, J.)
sundar/-